

Exhibit 1

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE
GREENEVILLE DIVISION**

UNITED STATES OF AMERICA and :
STATE OF TENNESSEE, :
:
Plaintiff, :
:
v. : **CASE NO.: 2:21-CV-00080-JRG-CRW**
:
WALGREEN CO., :
:
Defendant. :
:
:

**DECLARATION OF JOHN DAVID COLLINS IN SUPPORT OF
NON-PARTY MAGELLAN MEDICAID ADMINISTRATION, INC.'S
MOTION TO ALLOCATE COST**

Pursuant to 28 U.S.C. 1746, the undersigned, John David Collins, states as follows:

1. My name is John David Collins. I am an attorney with the law firm Maynard Cooper and Gale, P.C. and I am counsel for non-party Magellan Medicaid Administration, Inc. (“Magellan”) in the above-styled action.
2. I make this declaration in support of Magellan’s motion to allocate costs based upon personal knowledge and would be competent to testify regarding these matters if I was called and sworn as a witness.
3. On December 20, 2021, the parties and Magellan met and conferred regarding the scope of Magellan’s document productions. Magellan’s corporate counsel advised that Magellan’s prior authorization custodians worked almost exclusively in Magellan’s claims system (“FirstTrax”) which documents their communications, authorizations, and claims related notes, and that all records from that system were previously produced by the State.
4. Magellan further advised that, due to the nature of their job duties and the need for multiple reviewers to have access to the same information, these custodians rarely, if ever, communicated about claim authorizations via email.
5. Accordingly, Magellan advised that processing and searching email data for such an extended time-period for all 61 prior authorization custodians was not proportional and unlikely to generate responsive information. Magellan suggested that e-mails for a handful

of prior authorization custodians be pulled initially so relevance and scope could be tested before ingesting more data at a considerable expense.

6. During the parties follow up meet and confer on January 7, 2022, Magellan again expressed concern about the relevancy, proportionality and costs of processing and reviewing email data for 69 custodians potentially spanning 12 years (including two years prior to Magellan's contract with the State and two years after the contract ended).
7. Walgreens would not agree to reduce the number of custodians or narrow the time frame for the searches.
8. Following the parties third meet and confer on February 22, 2022, Walgreens agreed to reduce the number of prior authorization custodians, limit the relevant time frame for the prior authorization custodians (October 1, 2014 to December 31, 2016), revise and tailor a majority of its search terms to the TennCare program, and allow the use of technology assisted review ("TAR") to potentially reduce the number of documents subject to review.
9. After implementing these modifications, the scope of the documents to be processed and reviewed has been reduced significantly.
10. Nevertheless, Magellan has already incurred significant cost, and the costs to be incurred based on the current state of negotiation remain significant. Best estimates put these costs between \$148,826.98 and \$167,674.98, exclusive of the attorneys' fees Magellan has incurred (\$104,485) in responding to Walgreens' discovery requests.
11. Attached hereto as **Exhibit A** is a true and correct copy of the invoice received from Consilio, LLC, Magellan's e-discovery vendor, for services rendered during the month of January. The total amount reflected on this invoice is \$36,496.33.
12. Attached hereto as **Exhibit B** is a true and correct copy of a projection received from Consilio, LLC, providing an estimate of costs for services rendered during the month of February. The total amount reflected on this estimate is \$25,033.98.
13. Attached hereto as **Exhibit C** is a true and correct copy of a projection received from Consilio, LLC, providing an estimate of the processing, support, and hosting costs Consilio anticipates will be incurred during the month of March. The total amount reflected on this estimate is \$16,350.
14. Attached hereto as **Exhibit D** is a true and correct copy of a projection received from Consilio, LLC, providing an estimate of costs Consilio anticipates will be incurred to perform review of the ESI records loaded to-date. The total amount reflected on this estimate is between \$60,960 and \$77,892.
15. Attached hereto as **Exhibit E** is a true and correct copy of a projection received from Consilio, LLC, providing an estimate of costs Consilio anticipates will be incurred to ingest

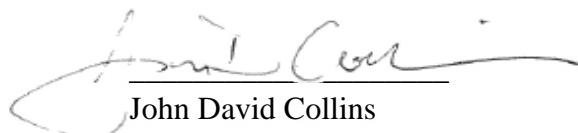
the ESI records for the additional prior authorization custodians requested by Walgreens to be processed for review in this matter. The total amount reflected on this estimate is \$3,094.

16. Attached hereto as **Exhibit F** is a true and correct copy of a projection received from Consilio, LLC, providing an estimate of costs Consilio anticipates will be incurred to perform review of the ESI records for the additional prior authorization custodians requested by Walgreens. The total amount reflected on this estimate is between \$6,893 and \$8,809.
17. Attached hereto as **Exhibit G** is a true and correct copy of the email sent by Michael Dziuban, one of Walgreen's attorneys, to counsel for the Plaintiffs, on October 20, 2021.
18. The document attached hereto as **Exhibit H** contains true and correct copies of the following emails:
 - A. Campbell Email to J. Collins et. al., December 20, 2021
 - M. Dziuban Email to J. Collins et. al., December 22, 2021
 - M. Dziuban Email to J. Collins et. al., January 19, 2022
 - J. Collins Email to M. Dziuban et. al., January 20, 2022

19. Attached hereto as **Exhibit I** is a true and correct copy of the email sent by Todd Panciera, one of Magellan's attorneys, to counsel for Walgreens and for the Plaintiffs, on January 28, 2022.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed this 8th day of March, 2022 at Birmingham, Alabama.



John David Collins

Exhibit A



Invoice

Corporate Office

1828 L Street NW Suite 1070
Washington, DC 20036
T: 202-822-6222
www.consilio.com

Remittance Address

DEPT CH 17174
Palatine, Illinois 60055-7174

Invoice To:

Magellan Health Services, Inc.
4800 N Scottsdale Rd Suite 4400
Scottsdale, AZ 85251
United States

STRICTLY CONFIDENTIAL

Invoice Date	Invoice Number
1/31/2022	INV302464001

Engagement No.	Engagement Name	Payment Terms		
300274-325810	MCG_Magellan_USA v. Walgreens			Net 30

Description	Quantity	Unit of Measure	Unit Price	Extended Price
Data Analytics Specialist Support Activities	2.00	HOUR	\$250.00	\$500.00
Collections (Hourly)	21.50	HOUR	\$250.00	\$5,375.00
Collections and Forensics - Project Management	1.50	HOUR	\$150.00	\$225.00
Shipping	1.00	Each	\$9.27	\$9.27
Fedex Box; Tracking: 288762156224				
User Access [Billable Users - External]	1.00	User	\$75.00	\$75.00
Project Management & Support Services	48.61	HOUR	\$150.00	\$7,291.50
Active Hosting Hosting - Admin Staging	485.71	GB	\$6.00	\$2,914.26
Processing	670.21	GB	\$30.00	\$20,106.30

TERMS: Unless otherwise covered by a separate written agreement, this invoice is due and payable within 30 days of receipt and past due after that. Client is subject to maximum allowable finance charges on all past due accounts plus any related attorney fees and collection charges incurred by Consilio, LLC.

Subtotal	\$36,496.33
Misc	\$0.00
Tax	\$0.00
Delivery	\$0.00
Total	\$36,496.33

Bank Information

Bank Name: HSBC

Account Name: Consilio LLC

Account Number: 622000527 / **Routing Number:** 022000020 / **ABA Number:** 021001088 / **SWIFT Code:** MRMDUS33

For electronic payment, kindly send remittance details via email to: accountsreceivable@consilio.com

Please include invoice number(s) to ensure proper credit.

Exhibit B

300274-325810 MCG_Magellan_USA v. Walgreens

ClientName: Magellan Health Services, Inc.

Billing Month: 2022-02

Engagement Number	Engagement Name	Currency	Category Name	Service Name	Pricing Unit	Pricing Per Unit	Number of Units	Extended Price
300274-325810	MCG_Magellan_USA v. Walgreens	USD	Analytics	Data Analytics Hours	Hour	\$ 250.00	5.87	\$ 1,467.50
300274-325810	MCG_Magellan_USA v. Walgreens	USD	DFES	Collections (Hourly)	Hour	\$ 250.00	7.00	\$ 1,750.00
300274-325810	MCG_Magellan_USA v. Walgreens	USD	PM-Data Services	Project Management & Support Services	Hour	\$ 150.00	65.24	\$ 9,786.00
300274-325810	MCG_Magellan_USA v. Walgreens	USD	PM-Data Services	User Access	User	\$ 75.00	1.00	\$ 75.00
300274-325810	MCG_Magellan_USA v. Walgreens	USD	PM-Data Services	Hosting - Admin Staging	GB	\$ 6.00	1,200.58	\$ 7,203.48
300274-325810	MCG_Magellan_USA v. Walgreens	USD	PM-Data Services	Processing - Ingested Size (Two Tier)	GB	\$ 30.00	158.40	\$ 4,752.00
2/2022 eDiscovery Estimate								\$ 25,033.98

Exhibit C

300274-325810 MCG_Magellan_USA v. Walgreens

ClientName: Magellan Health Services, Inc.

Billing Month: 2022-03

Engagement Number	Engagement Name	Currency	Category Name	Service Name	Pricing Unit	Pricing Per Unit	Number of Units	Extended Price
300274-325810	MCG_Magellan_USA v. Walgreens	USD	Analytics	Data Analytics Hours	Hour	\$ 250.00	25.00	\$ 6,250.00
300274-325810	MCG_Magellan_USA v. Walgreens	USD	PM-Data Services	User Access	User	\$ 75.00	1.00	\$ 75.00
300274-325810	MCG_Magellan_USA v. Walgreens	USD	PM-Data Services	Hosting - Admin Staging	GB	\$ 6.00	1,110.58	\$ 6,663.48
300274-325810	MCG_Magellan_USA v. Walgreens	USD	PM-Data Services	Hosting - Review Population	GB	\$ 12.00	90.00	\$ 1,080.00
300274-325810	MCG_Magellan_USA v. Walgreens	USD	PM-Data Services	Processing - Promoted Size (Two Tier)	GB	\$ 140.00	90.00	\$ 12,600.00
300274-325810	MCG_Magellan_USA v. Walgreens	USD	PM-Data Services	Project Management & Support Services	Hour	\$ 150.00	25.00	\$ 3,750.00
3/2022 eDiscovery Estimate								\$ 16,350.00

Exhibit D



Total Documents to Review (TAR)	37,588
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Managed Review - US - Secure Virtual Review - Licensed

Hourly Pricing Model	
Reviewer Rate	\$42
Team Lead/QC Rate	\$55
Project Management Rate	\$95

Hourly Review - 50 Documents per Hour		
1st Level Review Speed	50	
Total Review Hours	884	Time Allocation Assumption
First Level Review	752	85%
Quality Control	88	10%
Review Management	44	5%
Total Cost	\$40,639	

Hourly Review - 40 Documents per Hour		
1st Level Review Speed	40	
Total Review Hours	1,106	Time Allocation Assumption
First Level Review	940	85%
Quality Control	111	10%
Review Management	55	5%
Total Cost	\$50,798	

1L SUMMARY		
Hourly Review - 50 Documents per Hour	\$40,639	
Hourly Review - 40 Documents per Hour	\$50,798	



Total Documents to Privilege Log (TAR)	7,518
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Managed Review - US - Secure Virtual Review - Licensed

Hourly Pricing Model	
Reviewer Rate	\$42
Team Lead/QC Rate	\$55
Project Management Rate	\$95

Privilege Log - 20 Documents per Hour		
1st Level Review Speed	20	
Total Review Hours	442	Time Allocation Assumption
First Level Review	376	85%
Quality Control	44	10%
Review Management	22	5%
Total Cost	\$20,321	

Privilege Log - 15 Documents per Hour		
1st Level Review Speed	15	
Total Review Hours	590	Time Allocation Assumption
First Level Review	501	85%
Quality Control	59	10%
Review Management	29	5%
Total Cost	\$27,094	

PRIV LOG SUMMARY		
Privilege Log - 20 Documents per Hour	\$20,321	
Privilege Log - 15 Documents per Hour	\$27,094	

TOTAL SUMMARY (Low to High)		
1L and Priv Log Review (Low)	\$60,960	
1L and Priv Log Review (High)	\$77,892	

Exhibit E

300274-325810 MCG_Magellan_USA v. Walgreens

ClientName: Magellan Health Services, Inc.

Engagement Number	Engagement Name	Currency	Category Name	Service Name	Pricing Unit	Pricing Per Unit	Number of Units	Extended Price
300274-325810	MCG_Magellan_USA v. Walgreens	USD	PM-Data Services	Hosting - Review Population	GB	\$ 12.00	17.00	\$ 204.00
300274-325810	MCG_Magellan_USA v. Walgreens	USD	PM-Data Services	Processing - Ingested Size (Two Tier)	GB	\$ 30.00	17.00	\$ 510.00
300274-325810	MCG_Magellan_USA v. Walgreens	USD	PM-Data Services	Processing - Promoted Size (Two Tier)	GB	\$ 140.00	17.00	\$ 2,380.00
17 GB eDiscovery Estimate							\$ 3,094.00	

Exhibit F



Total Documents to Review (TAR)	4,250
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Managed Review - US - Secure Virtual Review - Licensed

Hourly Pricing Model	
Reviewer Rate	\$42
Team Lead/QC Rate	\$55
Project Management Rate	\$95

Hourly Review - 50 Documents per Hour		
1st Level Review Speed	50	
Total Review Hours	100	Time Allocation Assumption
First Level Review	85	85%
Quality Control	10	10%
Review Management	5	5%
Total Cost	\$4,595	

Hourly Review - 40 Documents per Hour		
1st Level Review Speed	40	
Total Review Hours	125	Time Allocation Assumption
First Level Review	106	85%
Quality Control	13	10%
Review Management	6	5%
Total Cost	\$5,745	

1L SUMMARY		
Hourly Review - 50 Documents per Hour		\$4,595
Hourly Review - 40 Documents per Hour		\$5,745



Total Documents to Privilege Log (TAR)	850
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Managed Review - US - Secure Virtual Review - Licensed

Hourly Pricing Model	
Reviewer Rate	\$42
Team Lead/QC Rate	\$55
Project Management Rate	\$95

Privilege Log - 20 Documents per Hour		
1st Level Review Speed	20	
Total Review Hours	50	Time Allocation Assumption
First Level Review	43	85%
Quality Control	5	10%
Review Management	3	5%
Total Cost	\$2,298	

Privilege Log - 15 Documents per Hour		
1st Level Review Speed	15	
Total Review Hours	67	Time Allocation Assumption
First Level Review	57	85%
Quality Control	7	10%
Review Management	3	5%
Total Cost	\$3,064	

PRIV LOG SUMMARY		
Privilege Log - 20 Documents per Hour		\$2,298
Privilege Log - 15 Documents per Hour		\$3,064

TOTAL SUMMARY (Low to High)		
1L and Priv Log Review (Low)		\$6,893
1L and Priv Log Review (High)		\$8,809

Exhibit G

From: Dziuban, Michael R. <MDziuban@gibsondunn.com>
Sent: Wednesday, October 20, 2021 11:02 PM
To: McConkey, Robert (USATNE) <Robert.McConkey@usdoj.gov>; Andrew B. Campbell <Andrew.Campbell@ag.tn.gov>; Tony Hullender <Tony.Hullender@ag.tn.gov>; Asiyanbi, Samson (CIV) <Samson.Asiyanbi2@usdoj.gov>
Cc: Brodsky, Reed <RBrodsky@gibsondunn.com>; Katterhagen, Jillian N. <JKatterhagen@gibsondunn.com>; Clint Woodfin <cwoodfin@spicerfirm.com>
Subject: RE: USA & State of Tenn. v. Walgreen Co., No. 21-cv-00080-JRG-CRW (E.D. Tenn.)

Rob:

Thank you for your response to our 10/13 letter. Please let us know as soon as possible the government's position on the proposed search terms. Please also indicate what sort of production specifications (e.g., concerning metadata) you propose the parties follow in making document productions. We are reviewing the edits you sent earlier today to the proposed protective order.

Regarding the custodians for the email searches, in addition to the custodians that you proposed in your email, we propose that the following additional TennCare and/or TennCare Pharmacy Advisory Committee custodians be searched:

- Susie Baird (Director of Policy)
- LaDonna Burton (TennCare Solutions Unit)
- Aaron Butler (Director of Policy)
- Vaughn Frigon (Chief Medical Officer)
- Darin Gordon (Director)
- Wendy Long (Director)
- Gabe Roberts (Director)
- Timothy Sawyers (Director of Account Management)
- Stephen Smith (Director)
- Victor Wu (Chief Medical Officer)
- Raymong McIntire
- Andrei Dumitrescu
- Shana Bush
- Edward Capparelli
- David Collier
- J. Rusty Hailey
- Sara Hughes
- James Johns
- Carol Minor
- Joel Phares

- Christopher Schwerdt
- Eleanor Twigg
- Alan Corley
- Ernest Jones
- Sherry Page
- Rodney Poling
- Karen Rhea
- Any other individuals with relevant knowledge

In addition, we also ask that these Magellan custodians be searched:

- Jeff Baiter (Clinical Pharmacy Technician)
- Kimberly Barnes (Clinical Pharmacy Technician)
- Linda-Marika J. Fichtinger (Clinical Pharmacy Technician)
- Torsha T. Terrell (title unknown)
- Dr. Tracy Lovett
- Dr. Leslie Pittman
- The list of the current and former Magellan employees in Exhibit 1 of the government's Initial Disclosures who reviewed prior authorizations for the 65 patients at issue in this case
- Any other individuals with relevant knowledge

In addition, we also ask that you search the following CMS/HHS custodians:

- John Coster (Director, Division of Pharmacy, CMS)
- Alissa Mooney DeBoy (Director, Disabled and Elderly Health Programs Group, CMS)
- Any other individuals with relevant knowledge

In addition, we also ask that you search the following custodians:

- Scotty Ferguson (Special Agent, TBI)
- Richy Walker (Special Agent, TBI)
- Any other individuals with relevant knowledge, including from TBI, the FBI, the U.S. Attorney's Office for EDTN, the TN AG's office, and Main Justice

Please let us know your views. Walgreens reserves all rights to request that additional custodians be searched.

Thank you also for confirming that "the criminal division of the U.S. Attorney's Office has a copy of the Presentence Report filed with the Court by the U.S. Probation Office in Amber Reilly's criminal case, as well as the sealed doctor's evaluation."

Regarding the switch from Magellan to OptumRx, we appreciate the information about the timing of the switch. Until we receive more information from you about the timing of the changes to TennCare's prior authorization criteria for the four DAAs at issue, and regarding the reasons for which Magellan transitioned out of the PBM role, we do not intend to modify our requests for documents related to OptumRx.

With those substantive points out of the way, I will respond briefly to your remarks about the length of time it took for us to circulate the letter. Simply put, it is irrelevant. Your obligations to respond to our discovery requests were not suspended in the time it took for us to commit the parties' positions to writing. The government knew at the end of the 9/27 meet-and-confer what Walgreens was asking of it, most of which required no further action on the part of Walgreens (e.g., in the form of draft search terms or the draft protective order). Frankly, the length of time it took for us to draft the letter was occasioned in no small part by the need, after the 9/27 teleconference, for us to try to make sense of the government's position amid numerous inconsistencies between the government's written responses and objections to the RFPs, on the one hand, and its position as expressed to us during the teleconference, on the other hand. While we left the teleconference

with a clear understanding of the government's position on that day regarding the items we discussed, it still took time to revisit the written responses and objections and assess the implications of the discussion for Walgreens' position. So, while we are open to hearing a proposal for alternate deadlines for the items covered in the letter (although we note you have provided no such proposal), these are the government's discovery obligations we are talking about. The Court issued a scheduling order, and we expect the government to work diligently and timely to meet its obligations consistent with that schedule.

Thank you, and we look forward to hearing from you as soon as possible.

Best regards,

Michael

Michael R. Dziuban

GIBSON DUNN

Gibson, Dunn & Crutcher LLP
1050 Connecticut Avenue, N.W., Washington, DC 20036-5306
O: [+1 202.955.8252](tel:+12029558252) • M: [+1 571.239.1379](tel:+15712391379)
MDziuban@gibsondunn.com • www.gibsondunn.com

From: McConkey, Robert (USATNE) <Robert.McConkey@usdoj.gov>
Sent: Friday, October 15, 2021 4:03 PM
To: Dziuban, Michael R. <MDziuban@gibsondunn.com>; Andrew B. Campbell <Andrew.Campbell@ag.tn.gov>; Tony Hullender <Tony.Hullender@ag.tn.gov>; Asyanbi, Samson (CIV) <Samson.Asiyanbi2@usdoj.gov>
Cc: Brodsky, Reed <RBrodsky@gibsondunn.com>; Katterhagen, Jillian N. <JKatterhagen@gibsondunn.com>; Clint Woodfin <cwoodfin@spicerfirm.com>
Subject: RE: USA & State of Tenn. v. Walgreen Co., No. 21-cv-00080-JRG-CRW (E.D. Tenn.)

[WARNING: External Email]

Michael –

Thank you for your email and the letter attached to it, which arrived in my in-box on October 13 at 11:37 pm Eastern time. You may recall that we requested such a letter at the conclusion of our discussion on September 27. And, while we received it after business hours a little over two weeks later, we notice that it included a number of immediate (and somewhat arbitrary) deadlines, which we did not discuss during our previous telephonic conference. While we find some of these unilateral deadlines to be unreasonable, and do not agree to be bound to them, please rest assured that—since our conference on September 27—we have been working diligently to address the issues that we discussed with you, and we will continue to do so. As we discussed at our teleconference on September 27, our immediate priority at that time was to prepare and file a response to Walgreens' supplemental brief in support of its motion to dismiss. Now, our primary focus is to collect, Bates stamp and otherwise prepare numerous documents for production in response to Walgreens' requests for production. We intend to begin production as soon as possible.

With respect to the draft protective order that you circulated, we anticipate getting back to you with comments and proposed changes early next week. Andrew and Tony are currently awaiting final comments and input from their client representative, who is out of the office until Monday. For the same reason, we cannot get back to you before next week regarding Walgreens' proposed search terms. We can tell you that TennCare custodians identified so far are Renee Williams-Clark (Chief Pharmacy Officer, TennCare), Cindy Furlough (Compliance Manager, Managed Care Operations, TennCare Office of Program Integrity (OPI)), Elizabeth Lehner (former TennCare OPI investigator), David Weeks (Senior Associate General Counsel, TennCare Office of General Counsel), Floyd Price (Director, TennCare OPI), and Annette Dreifke (Investigations Manager, TennCare OPI).

Additionally, I can confirm for you that the criminal division of the U.S. Attorney's Office has a copy of the Presentence Report filed with the Court by the U.S. Probation Office in Amber Reilly's criminal case, as well as the sealed doctor's evaluation, but we are currently assessing whether and under what conditions we can release those documents given the restrictions that the court places on disclosure of presentence reports.

Finally, regarding the timing of the change from Magellan to OptumRx as TennCare's PMB, Magellan's contract with TennCare expired on 12/31/2019. Prior to the expiration of the contract, Tennessee issued a request for proposals as required by state law and Optum was awarded the contract that began in January 2020.

Again, we will be in touch in the coming days with additional information, and responses to your latest letter, as soon such information is available to us. Be advised that, as we told you at our September 27 meet-and-confer, we are communicating with our clients on a regular and ongoing basis regarding discovery issues, including those which you have raised.

Rob

Robert C. McConkey, III | Assistant U.S. Attorney | Eastern District of Tennessee | 800 Market Street, Suite 211 | Knoxville, TN 37902 | [865-225-1657](tel:865-225-1657) | Robert.McConkey@usdoj.gov

From: Dziuban, Michael R. <MDziuban@gibsondunn.com>
Sent: Wednesday, October 13, 2021 11:37 PM
To: McConkey, Robert (USATNE) <RMcConkey@usa.doj.gov>; Andrew B. Campbell <Andrew.Campbell@ag.tn.gov>; Tony Hullender <Tony.Hullender@ag.tn.gov>; Asiyanbi, Samson (CIV) <Samson.Asiyanbi2@usdoj.gov>
Cc: Brodsky, Reed <RBrodsky@gibsondunn.com>; Katterhagen, Jillian N. <JKatterhagen@gibsondunn.com>; Clint Woodfin <cwoodfin@spicerfirm.com>
Subject: [EXTERNAL] RE: USA & State of Tenn. v. Walgreen Co., No. 21-cv-00080-JRG-CRW (E.D. Tenn.)

Counsel:

Please see the attached correspondence.

Best regards,

Michael

Michael R. Dziuban

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MDziuban@gibsondunn.com • www.gibsondunn.com

From: McConkey, Robert (USATNE) <Robert.McConkey@usdoj.gov>
Sent: Friday, October 8, 2021 10:03 AM
To: Dziuban, Michael R. <MDziuban@gibsondunn.com>; Andrew B. Campbell <Andrew.Campbell@ag.tn.gov>; Tony Hullender <Tony.Hullender@ag.tn.gov>; Asiyanbi, Samson (CIV) <Samson.Asiyanbi2@usdoj.gov>
Cc: Brodsky, Reed <RBrodsky@gibsondunn.com>; Katterhagen, Jillian N. <JKatterhagen@gibsondunn.com>; Clint Woodfin <cwoodfin@spicerfirm.com>
Subject: RE: USA & State of Tenn. v. Walgreen Co., No. 21-cv-00080-JRG-CRW (E.D. Tenn.)

[WARNING: External Email]

Thanks Michael. We will review and get back to you.

From: Dziuban, Michael R. <MDziuban@gibsondunn.com>
Sent: Wednesday, October 6, 2021 12:53 PM
To: McConkey, Robert (USATNE) <RMcConkey@usa.doj.gov>; Andrew B. Campbell <Andrew.Campbell@ag.tn.gov>; Tony Hullender <Tony.Hullender@ag.tn.gov>; Asyanbi, Samson (CIV) <Samson.Asiyanbi2@usdoj.gov>
Cc: Brodsky, Reed <RBrodsky@gibsondunn.com>; Katterhagen, Jillian N. <JKatterhagen@gibsondunn.com>; Clint Woodfin <cwoodfin@spicerfirm.com>
Subject: [EXTERNAL] RE: USA & State of Tenn. v. Walgreen Co., No. 21-cv-00080-JRG-CRW (E.D. Tenn.)

Counsel:

Further to our meet-and-confer last week, attached please find the following:

1. A draft joint stipulated protective order; and
2. proposed search terms for purposes of Plaintiffs' document review.

Please let us know your thoughts as soon as possible. On item 2, we would appreciate if, in addition to letting us know your thoughts on the terms themselves, you could tell us which custodians' data you propose to run the terms across.

Best regards,

Michael

Michael R. Dziuban

GIBSON DUNN

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1050 Connecticut Avenue, N.W., Washington, DC 20036-5306
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MDziuban@gibsondunn.com • www.gibsondunn.com

From: McConkey, Robert (USATNE) <Robert.McConkey@usdoj.gov>
Sent: Wednesday, September 22, 2021 1:11 PM
To: Dziuban, Michael R. <MDziuban@gibsondunn.com>; Andrew B. Campbell <Andrew.Campbell@ag.tn.gov>; Tony Hullender <Tony.Hullender@ag.tn.gov>; Asyanbi, Samson (CIV) <Samson.Asiyanbi2@usdoj.gov>
Cc: Brodsky, Reed <RBrodsky@gibsondunn.com>; Katterhagen, Jillian N. <JKatterhagen@gibsondunn.com>; Clint Woodfin <cwoodfin@spicerfirm.com>
Subject: RE: USA & State of Tenn. v. Walgreen Co., No. 21-cv-00080-JRG-CRW (E.D. Tenn.)

[WARNING: External Email]

Thanks for your email. I just returned from leave and the remainder of my week is pretty full. Andrew, Tony and I are generally available Monday September 27 except between 2:30-3:00 Eastern. Would sometime Monday work for you and your colleagues?

Rob

From: Dziuban, Michael R. <MDziuban@gibsondunn.com>
Sent: Tuesday, September 21, 2021 5:45 PM
To: Andrew B. Campbell <Andrew.Campbell@ag.tn.gov>; McConkey, Robert (USATNE) <RMCConkey@usa.doj.gov>; Tony Hullender <Tony.Hullender@ag.tn.gov>; Asiyanbi, Samson (CIV) <Samson.Asiyanbi2@usdoj.gov>
Cc: Brodsky, Reed <RBrodsky@gibsondunn.com>; Katterhagen, Jillian N. <JKatterhagen@gibsondunn.com>; Clint Woodfin <cwoodfin@spicerfirm.com>
Subject: [EXTERNAL] Re: USA & State of Tenn. v. Walgreen Co., No. 21-cv-00080-JRG-CRW (E.D. Tenn.)

Counsel:

Please let us know your availability this Thursday (9/23) for a meet-and-confer teleconference regarding Plaintiffs' Responses to Walgreens' First Requests for Production. If you are not available on Thursday, we would appreciate if you could propose some alternate times.

Thank you,

Michael

Michael R. Dziuban

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MDziuban@gibsondunn.com • www.gibsondunn.com

On Sep 15, 2021, at 6:06 PM, Andrew B. Campbell <Andrew.Campbell@ag.tn.gov> wrote:

[WARNING: External Email]

Attached, please find Plaintiffs' Responses to Defendant's First Requests for Production.

Andrew B. Campbell, Esq.
Senior Assistant Attorney General
Public Interest Division
Office of Tennessee Attorney General
P.O. Box 20207
Nashville, Tennessee 37202-0207
p. [615.532.0356](tel:6155320356)
Andrew.Campbell@ag.tn.gov
<image001.jpg>

From: Dziuban, Michael R. <MDziuban@gibsondunn.com>
Sent: Monday, August 2, 2021 10:57 PM

To: McConkey, Robert (USATNE) <Robert.McConkey@usdoj.gov>; Brodsky, Reed <RBrodsky@gibsondunn.com>; Andrew B. Campbell <Andrew.Campbell@ag.tn.gov>; Tony Hullender <Tony.Hullender@ag.tn.gov>; Asiyanbi, Samson (CIV) <Samson.Asiyanbi2@usdoj.gov>
Cc: Clint Woodfin <cwoodfin@spicerfirm.com>; Katterhagen, Jillian N. <JKatterhagen@gibsondunn.com>
Subject: RE: USA & State of Tenn. v. Walgreen Co., No. 21-cv-00080-JRG-CRW (E.D. Tenn.)

Counsel:

Thank you for your time on today's teleconference. Per our discussion, attached please find a draft proposed scheduling order that reflects Walgreens' position as conveyed on today's call. For convenience, we have included the proposed dates in green text, and included references to the number of weeks prior to trial that each date reflects.

Also, attached please find Walgreens' First Requests for Production of Documents. Please confirm whether you consent to service via email of these requests and future discovery requests in this case.

Best regards,

Michael

Michael R. Dziuban

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O: +1 202.955.8252 • M: +1 571.239.1379
MDziuban@gibsondunn.com • www.gibsondunn.com

From: McConkey, Robert (USATNE) <Robert.McConkey@usdoj.gov>
Sent: Thursday, July 29, 2021 1:34 PM
To: Dziuban, Michael R. <MDziuban@gibsondunn.com>; Brodsky, Reed <RBrodsky@gibsondunn.com>; Andrew B. Campbell <Andrew.Campbell@ag.tn.gov>; Tony Hullender <Tony.Hullender@ag.tn.gov>; Asiyanbi, Samson (CIV) <Samson.Asiyanbi2@usdoj.gov>
Cc: Clint Woodfin <cwoodfin@spicerfirm.com>; Katterhagen, Jillian N. <JKatterhagen@gibsondunn.com>
Subject: RE: USA & State of Tenn. v. Walgreen Co., No. 21-cv-00080-JRG-CRW (E.D. Tenn.)

[WARNING: External Email]

Unfortunately tomorrow won't work.

Rob

From: McConkey, Robert (USATNE)
Sent: Wednesday, July 28, 2021 4:38 PM
To: Dziuban, Michael R. <MDziuban@gibsondunn.com>; Brodsky, Reed <RBrodsky@gibsondunn.com>; Andrew B. Campbell <Andrew.Campbell@ag.tn.gov>; Tony Hullender <Tony.Hullender@ag.tn.gov>; Asiyanbi, Samson (CIV) <Samson.Asiyanbi2@usdoj.gov>
Cc: Clint Woodfin <cwoodfin@spicerfirm.com>; Katterhagen, Jillian N.

<JKatterhagen@gibsondunn.com>

Subject: RE: USA & State of Tenn. v. Walgreen Co., No. 21-cv-00080-JRG-CRW (E.D. Tenn.)

Michael – We are checking our schedules and should be able to let you know something firm by tomorrow, but we generally anticipate having availability Monday or Tuesday of next week.

From: Dziuban, Michael R. <MDziuban@gibsondunn.com>

Sent: Wednesday, July 28, 2021 9:33 AM

To: McConkey, Robert (USATNE) <RMcConkey@usa.doj.gov>; Brodsky, Reed <RBrodsky@gibsondunn.com>; Andrew B. Campbell <Andrew.Campbell@ag.tn.gov>; Tony Hullender <Tony.Hullender@ag.tn.gov>; Asyanbi, Samson (CIV) <Samson.Asiyanbi2@usdoj.gov>

Cc: Clint Woodfin <cwoodfin@spicerfirm.com>; Katterhagen, Jillian N.

<JKatterhagen@gibsondunn.com>

Subject: RE: USA & State of Tenn. v. Walgreen Co., No. 21-cv-00080-JRG-CRW (E.D. Tenn.)

Rob:

Please advise as to Plaintiffs' availability next Monday, August 2, for the parties' initial conference under FRCP 26(f). Alternatively, if Monday does not work, please let us know your availability this Friday, July 30.

Thanks,

Michael

Michael R. Dziuban

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MDziuban@gibsondunn.com • www.gibsondunn.com

From: McConkey, Robert (USATNE) <Robert.McConkey@usdoj.gov>

Sent: Monday, July 26, 2021 11:00 AM

To: Brodsky, Reed <RBrodsky@gibsondunn.com>; Dziuban, Michael R. <MDziuban@gibsondunn.com>; Andrew B. Campbell <Andrew.Campbell@ag.tn.gov>; Tony Hullender <Tony.Hullender@ag.tn.gov>; Asyanbi, Samson (CIV) <Samson.Asiyanbi2@usdoj.gov>

Cc: Clint Woodfin <cwoodfin@spicerfirm.com>; Katterhagen, Jillian N.

<JKatterhagen@gibsondunn.com>

Subject: RE: USA & State of Tenn. v. Walgreen Co., No. 21-cv-00080-JRG-CRW (E.D. Tenn.)

[WARNING: External Email]

brief.

From: Brodsky, Reed <RBrodsky@gibsondunn.com>

Sent: Monday, July 26, 2021 8:58 AM

To: McConkey, Robert (USATNE) <RMcConkey@usa.doj.gov>; Dziuban, Michael R. <MDziuban@gibsondunn.com>; Andrew B. Campbell <Andrew.Campbell@ag.tn.gov>; Tony Hullender <Tony.Hullender@ag.tn.gov>; Asyanbi, Samson (CIV) <Samson.Asiyanbi2@usdoj.gov>

Cc: Clint Woodfin <cwoodfin@spicerfirm.com>; Katterhagen, Jillian N.

<JKatterhagen@gibsondunn.com>

Subject: RE: USA & State of Tenn. v. Walgreen Co., No. 21-cv-00080-JRG-CRW (E.D. Tenn.)

Rob: Thanks for your email. We understand scheduling challenges, particularly in the summer. Would you agree to a September 14 deadline for our reply brief? The reason for September 14 is that we have vacations scheduled for late August, and September 6 is Labor Day. Regards, Reed

From: McConkey, Robert (USATNE) <Robert.McConkey@usdoj.gov>

Sent: Friday, July 23, 2021 7:50 AM

To: Dziuban, Michael R. <MDziuban@gibsondunn.com>; Andrew B. Campbell <Andrew.Campbell@ag.tn.gov>; Tony Hullender <Tony.Hullender@ag.tn.gov>; Asyanbi, Samson (CIV) <Samson.Asiyanbi2@usdoj.gov>

Cc: Brodsky, Reed <RBrodsky@gibsondunn.com>; Clint Woodfin <cwoodfin@spicerfirm.com>; Katterhagen, Jillian N. <JKatterhagen@gibsondunn.com>

Subject: RE: USA & State of Tenn. v. Walgreen Co., No. 21-cv-00080-JRG-CRW (E.D. Tenn.)

[WARNING: External Email]

Thank you for forwarding the courtesy copies. Due to various scheduling challenges for our team, we would like to request a two week extension of time to respond to the motion. Would you please advise if you and your client would stipulate to the following as a proposed briefing schedule to be submitted to the Court under [E.D. Tenn. Local Rule 7.1](#)? The proposed date for Walgreens' reply brief, if any, represents an enlargement of 7 days, with an additional day added due to the Labor Day holiday.

- Deadline for Response by United States and State of Tennessee – Aug. 23, 2021
- Deadline for Walgreens' Reply Brief, if any – Sept. 7, 2021

If you are agreeable, we will be happy to prepare a proposed agreed order and forward it for your review prior to submission to the Court. I am generally available today or Monday if you wish to discuss.

Rob

Robert C. McConkey, III | Assistant U.S. Attorney | Eastern District of Tennessee | 800 Market Street, Suite 211 | Knoxville, TN 37902 | [865-225-1657](tel:865-225-1657) | Robert.McConkey@usdoj.gov

From: Dziuban, Michael R. <MDziuban@gibsondunn.com>

Sent: Tuesday, July 20, 2021 9:35 AM

To: McConkey, Robert (USATNE) <RMcConkey@usa.doj.gov>; Andrew B. Campbell <Andrew.Campbell@ag.tn.gov>; Tony Hullender <Tony.Hullender@ag.tn.gov>; Asyanbi, Samson (CIV) <Samson.Asiyanbi2@usdoj.gov>

Cc: Brodsky, Reed <RBrodsky@gibsondunn.com>; Clint Woodfin <cwoodfin@spicerfirm.com>; Katterhagen, Jillian N. <JKatterhagen@gibsondunn.com>

Subject: RE: USA & State of Tenn. v. Walgreen Co., No. 21-cv-00080-JRG-CRW (E.D. Tenn.)

Counsel:

Attached please find courtesy copies of our motion-to-dismiss papers as filed yesterday.

Best regards,

Michael

Michael R. Dziuban

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MDziuban@gibsondunn.com • www.gibsondunn.com

From: McConkey, Robert (USATNE) <Robert.McConkey@usdoj.gov>
Sent: Wednesday, July 14, 2021 3:38 PM
To: Dziuban, Michael R. <MDziuban@gibsondunn.com>; Andrew B. Campbell <Andrew.Campbell@ag.tn.gov>; Tony Hullender <Tony.Hullender@ag.tn.gov>; Asyanbi, Samson (CIV) <Samson.Asiyanbi2@usdoj.gov>
Cc: Brodsky, Reed <RBrodsky@gibsondunn.com>; Clint Woodfin <cwoodfin@spicerfirm.com>; Katterhagen, Jillian N. <JKatterhagen@gibsondunn.com>
Subject: RE: USA & State of Tenn. v. Walgreen Co., No. 21-cv-00080-JRG-CRW (E.D. Tenn.)

[External Email]

Michael – thank you for giving us the opportunity to review. The drafts look fine to us.

Rob

Robert C. McConkey, III | Assistant U.S. Attorney | Eastern District of Tennessee | 800 Market Street, Suite 211 | Knoxville, TN 37902 | [865-225-1657](tel:+18652251657) | Robert.McConkey@usdoj.gov

From: Dziuban, Michael R. <MDziuban@gibsondunn.com>
Sent: Wednesday, July 14, 2021 3:13 PM
To: McConkey, Robert (USATNE) <RMcConkey@usa.doj.gov>; Andrew B. Campbell <Andrew.Campbell@ag.tn.gov>; Tony Hullender <Tony.Hullender@ag.tn.gov>; Asyanbi, Samson (CIV) <Samson.Asiyanbi2@usdoj.gov>
Cc: Brodsky, Reed <RBrodsky@gibsondunn.com>; Clint Woodfin <cwoodfin@spicerfirm.com>; Katterhagen, Jillian N. <JKatterhagen@gibsondunn.com>
Subject: RE: USA & State of Tenn. v. Walgreen Co., No. 21-cv-00080-JRG-CRW (E.D. Tenn.)

Rob – further to my email below, attached are revised versions of the draft motion and proposed order for your review. I've also included PDF redlines so that you can see the changes since this morning.

We are not awaiting any further review by our client. Please let us know your thoughts and from there we will get these on file.

Thanks,

Michael

Michael R. Dziuban

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From: Dziuban, Michael R.
Sent: Wednesday, July 14, 2021 9:58 AM
To: 'McConkey, Robert (USATNE)' <Robert.McConkey@usdoj.gov>; 'Andrew B. Campbell' <Andrew.Campbell@ag.tn.gov>; 'Tony Hullender' <Tony.Hullender@ag.tn.gov>; 'Asiyanbi, Samson (CIV)' <Samson.Asiyanbi2@usdoj.gov>
Cc: Brodsky, Reed <RBrodsky@gibsondunn.com>; 'Clint Woodfin' <cwoodfin@spicerfirm.com>; Katterhagen, Jillian N. <JKatterhagen@gibsondunn.com>
Subject: RE: USA & State of Tenn. v. Walgreen Co., No. 21-cv-00080-JRG-CRW (E.D. Tenn.)

Rob:

Attached for your review are draft motion papers regarding Walgreens' time to answer the Complaint. These are drafts and remain subject to our client's review. We are happy to discuss if you wish.

Best regards,

Michael

Michael R. Dziuban

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MDziuban@gibsondunn.com • www.gibsondunn.com

From: Dziuban, Michael R.
Sent: Monday, July 12, 2021 1:38 PM
To: 'McConkey, Robert (USATNE)' <Robert.McConkey@usdoj.gov>; Andrew B. Campbell <Andrew.Campbell@ag.tn.gov>; Tony Hullender <Tony.Hullender@ag.tn.gov>; Asiyanbi, Samson (CIV) <Samson.Asiyanbi2@usdoj.gov>
Cc: Brodsky, Reed <RBrodsky@gibsondunn.com>; 'Clint Woodfin' <cwoodfin@spicerfirm.com>
Subject: RE: USA & State of Tenn. v. Walgreen Co., No. 21-cv-00080-JRG-CRW (E.D. Tenn.)

Rob:

Thanks for your note. Your summary of our position is mostly accurate, although we would clarify that we are not currently taking the position that a false record or statement is a requirement for reverse FCA liability. Instead, our position is that even ‘knowing[] and improper[] avoid[ance]’ of a repayment obligation—which is the only version of reverse FCA liability we think Plaintiffs could conceivably assert, given their allegations in the Complaint—requires that the government be deceived. We agree with you that this is ultimately a legal issue, but wanted to clarify our position.

We understand and appreciate your position on an extension motion in lieu of a stipulation, and we will prepare a draft motion for your review.

Best regards,

Michael

Michael R. Dziuban

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MDziuban@gibsondunn.com • www.gibsondunn.com

From: McConkey, Robert (USATNE) <Robert.McConkey@usdoj.gov>
Sent: Monday, July 12, 2021 12:29 PM
To: Dziuban, Michael R. <MDziuban@gibsondunn.com>; Andrew B. Campbell <Andrew.Campbell@ag.tn.gov>; Tony Hullender <Tony.Hullender@ag.tn.gov>; Asiyanbi, Samson (CIV) <Samson.Asiyanbi2@usdoj.gov>
Cc: Brodsky, Reed <RBrodsky@gibsondunn.com>
Subject: RE: USA & State of Tenn. v. Walgreen Co., No. 21-cv-00080-JRG-CRW (E.D. Tenn.)

[External Email]

Michael, Reed:

We appreciate speaking with you on Thursday, July 8. Based on your description of Walgreens' anticipated Motion to Dismiss, and how you expect the Motion to frame the issues, the United States and the State of Tennessee do not believe that the submission of an Amended Complaint is warranted. Specifically, we understand that it is Walgreens' position that (a) liability under 31 U.S.C. § 3729(a)(1)(A) and (a)(1)(B) and Tenn. Code Ann. § 71-5-182(a)(1)(A) and (a)(1)(B) cannot lie against Walgreens based on the conduct and knowledge of Reilly; and (b) in order for liability to attach under 31 U.S.C. § 3729(a)(1)(G) and Tenn. Code Ann. § 71-5-182(a)(1)(D), it must be alleged and proven that Walgreens engaged in an affirmative act of deception and made, used or relied upon false statements or records to knowingly and improperly "conceal" or avoid an obligation to repay money to the government. We believe that these are legal issues that are unlikely to be cured or avoided through an amended pleading. Accordingly, we believe that our discussion Thursday and this follow up communication satisfies the requirement to meet and confer under Judge Greer's order.

You also requested that the United States and the State of Tennessee stipulate to an extension of time for Walgreens to answer Counts VII and VIII of the Joint Complaint (Payment by Mistake and Unjust Enrichment) until after the Court rules on an anticipated motion to dismiss the FCA and TMFCA counts. Please be advised that Local Rule 12.1 prevents us from entering into a "stipulation" on that point, because the requested extension would necessarily exceed 21 days. However, if Walgreens files a motion with the Court seeking an extension of time to file an Answer until after a ruling is rendered on the Motion to Dismiss, neither the United States nor the State of Tennessee would oppose such a request. If you would forward a draft motion to us for review, we would appreciate it.

As always, if you believe there is anything more that we need to discuss, please let us know.

Best regards,

Rob

Robert C. McConkey, III | Assistant U.S. Attorney | Eastern District of Tennessee | 800 Market Street, Suite 211 | Knoxville, TN 37902 | [865-225-1657](tel:865-225-1657) | Robert.McConkey@usdoj.gov

From: Dziuban, Michael R. <MDziuban@gibsondunn.com>
Sent: Tuesday, July 6, 2021 9:41 PM
To: McConkey, Robert (USATNE) <RMcConkey@usa.doj.gov>; Andrew B. Campbell <Andrew.Campbell@ag.tn.gov>; Tony Hullender <Tony.Hullender@ag.tn.gov>; Asyanbi, Samson (CIV) <Samson.Asiyanbi2@usdoj.gov>
Cc: Brodsky, Reed <RBrodsky@gibsondunn.com>
Subject: USA & State of Tenn. v. Walgreen Co., No. 21-cv-00080-JRG-CRW (E.D. Tenn.)

Dear Counsel:

We hope this finds you well. Please let us know your availability in the 9-11am ET timeframe this Thursday (July 8) for a telephonic meet-and-confer pursuant to Judge Greer's standing order regarding motions to dismiss under Federal Rule of Civil Procedure 12(b) (*see* ECF 3).

Best regards,

Michael

Michael R. Dziuban

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<Ps' Responses to 1st RFPs.pdf>

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Exhibit H

From: John David Collins
Sent: Thursday, January 20, 2022 6:19 PM
To: Dziuban, Michael R.; Andrew B. Campbell; Tony Hullender; Nate Casey; McConkey, Robert (USATNE)
Cc: Phillips, Jonathan M.; Brodsky, Reed; Katterhagen, Jillian N.; Clint Woodfin (cwoodfin@spicerfirm.com); Todd Panciera
Subject: RE: U.S. & Tenn. v. Walgreen Co., No. 21-cv-00080-JRG-CRW - Walgreens' discovery responses; meet-and-confer per today's motion hearing
Attachments: MGLN Custodians Dates of Employment (06258993-3x80C68).XLSX

Michael:

We are in receipt of your email below, as well as your two late evening emails from Friday, January 14, 2022. I was disappointed to read that you are abandoning the plan for ESI discovery we discussed with you last month, which we have undertaken considerable expense to execute. Over the holiday weekend we began transmitting Magellan files for processing by our new e-discovery vendor – you may recall that our previous vendor conflicted out (presumably due to their engagement by your firm), which we only recently learned about on December 30, 2021. Given these facts, it should be obvious to you that we will not be in a position to search and produce data for 69 Magellan custodians (more than 1 TB of e-mail) in nine days' time. However, we hope to be in a position to begin running search terms and report initial findings next week. Based on those findings, we can discuss the scope and proportionality of your requests as well as a protocol for the production of ESI.

With respect to your specific questions, we have prepared the following update:

1. First, regarding the data we have on file for Magellan's 8 corporate custodians (including Leslie Pittman and Timothy Sawyers), Magellan was able to identify approximately 320 GB of data in these mailboxes. The records for these 8 custodians were transmitted to our vendor and should be available to query soon. Additionally, we exported the mailboxes of 5 PA "priority" custodians for study based on the list you provided in your January 14, 2022 email.
2. Regarding our archived data (i.e., e-mail that pre-dates Magellan's migration to O365), some historical files that were not migrated to O365 were retained in .pst file format in a separate archive folder. These are available beyond Magellan's standard retention period, likely because they were subject to a legal hold, or because they serve a specific business purpose (for example, a tax record). In their current format outside the O365 environment, analysis of the contents of these historical files is a highly manual process. To facilitate review of these records, the .pst files will be exported to our e-discovery vendor along with the rest of our e-mail files. We will provide further updates, including file sizes and date ranges, as that information becomes available.
3. The custodian totals we previously provided to you in our January 12, 2022 spreadsheet included the counts of active as well as archived (pre-2017) data. In their current format in O365, determining precise date ranges for these records would require Magellan to put eyes on potentially thousands of individual e-mail records. Once this data is fully within our vendor's e-discovery environment, however, more advanced software tools can be employed to quickly determine the date ranges for these records.
4. Through additional research, Magellan has now identified records (and can provide file counts for) all 61 prior authorization custodians, including Kimberly Barnes, who was previously omitted due to accidental oversight. An updated version of Magellan's January 12 spreadsheet with this information is attached.

As a final point, I disagree with your characterizations of my client's efforts to provide discovery in this matter. I also disagree with your suggestion that Magellan (a non-party) is an "agent of the state" for purposes of *any* request for production of documents/ESI that Walgreens serves on TennCare and that concepts of burden, relevance and proportionality for some reason do not apply to Magellan. Nevertheless, we have voluntarily responded to your

inquiries (data/bytes per custodian, PA employment/termination dates, etc.), worked with our vendor to process data for 13 custodians (thus far), and attempted to cooperate with you to establish a process that will allow us to evaluate and provide a reasonable and proportional response to your ESI requests. We will update you once the data submitted to our vendor has been processed and search terms are run.

Best Regards,

JDC

John David Collins

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A LexMundi Member

From: Dziuban, Michael R. <MDziuban@gibsondunn.com>
Sent: Wednesday, January 19, 2022 3:22 PM
To: John David Collins <JCollins@maynardcooper.com>; Andrew B. Campbell <Andrew.Campbell@ag.tn.gov>; Tony Hullender <Tony.Hullender@ag.tn.gov>; Nate Casey <Nate.Casey@ag.tn.gov>; McConkey, Robert (USATNE) <Robert.McConkey@usdoj.gov>
Cc: Phillips, Jonathan M. <JPhillips@gibsondunn.com>; Brodsky, Reed <RBrodsky@gibsondunn.com>; Katterhagen, Jillian N. <JKatterhagen@gibsondunn.com>; Clint Woodfin (cwoodfin@spicerfirm.com) <cwoodfin@spicerfirm.com>; Todd Panciera <TPanciera@maynardcooper.com>
Subject: RE: U.S. & Tenn. v. Walgreen Co., No. 21-cv-00080-JRG-CRW - Walgreens' discovery responses; meet-and-confer per today's motion hearing

John David:

We have not received a response to our email below from 1/14. This is just the latest in a series of delays by Magellan since our requests were served in August 2021. These delays are causing real prejudice to Walgreens, especially in light of the discovery deadlines that the court has imposed in this case. Your client has had months to conduct these searches, and its significant delays in doing so have cost our client months of time. We have a discovery schedule to keep and depositions to take. We initially agreed to start collection and production with a group of priority custodians to facilitate more prompt responses and progress, but that has not happened. Accordingly, we must now insist on production of all responsive materials in short order, regardless of the order in which the named custodians' data is collected and produced.

To avoid further delays and ensure that we can bring this matter to the court's attention in a timely fashion should that be necessary, please produce, no later than **January 28, 2022**, all responsive, non-privileged documents for the following sets of email custodians:

- The 44 prior authorization reviewers who your 1/12 spreadsheet indicated have data available (i.e., anyone with a number in the "Size (Bytes)" column);

- all corporate custodians (in the second tab of the Excel tracker) who have data available; and
- any custodians who do not have data available in Office 365 but do have data available in some form outside of O365.

We are willing to receive productions on a rolling basis.

As an interim step in advance of January 28, and in order to facilitate any refinements we may wish to make to the scope of our requests regarding email search and review, by **COB tomorrow, January 20**, we would like answers to the questions set forth in our 1/14 email. These are questions that could and should have had answers weeks, if not months, ago, and again the failure to provide a response constitutes yet more delay that we will bring to the court's attention if this is not rectified.

Best regards,

Michael

Michael R. Dziuban

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MDziuban@gibsondunn.com • www.gibsondunn.com

From: Dziuban, Michael R.
Sent: Friday, January 14, 2022 10:27 PM
To: 'John David Collins' <JCollins@maynardcooper.com>; Andrew B. Campbell <Andrew.Campbell@ag.tn.gov>; Tony Hullender <Tony.Hullender@ag.tn.gov>; Nate Casey <Nate.Casey@ag.tn.gov>; McConkey, Robert (USATNE) <Robert.McConkey@usdoj.gov>
Cc: Phillips, Jonathan M. <JPhillips@gibsondunn.com>; Brodsky, Reed <RBrodsky@gibsondunn.com>; Katterhagen, Jillian N. <JKatterhagen@gibsondunn.com>; Clint Woodfin (cwoodfin@spicerfirm.com) <cwoodfin@spicerfirm.com>; Todd Panciera <TPanciera@maynardcooper.com>
Subject: RE: U.S. & Tenn. v. Walgreen Co., No. 21-cv-00080-JRG-CRW - Walgreens' discovery responses; meet-and-confer per today's motion hearing

John David:

Thank you. Please prioritize search, review, and production of data for the following seven custodians:

1. Bueno, Julie
2. Johnson, Tiffany
3. Okaro, Obinna
4. Pittman, Leslie
5. Quintana, Christine

6. Sawyers, Timothy

7. Vaughan, Ashley

As discussed previously, Walgreens' position is that data should be searched and produced for all custodians. We are providing the above list of priority custodians for the sake of moving this review along as quickly as possible, but the entire search, review, and production in response to our RFPs must be completed as soon as possible.

Please also provide an update as soon as possible on the following:

1. **Existence of data for corporate custodians.** Your spreadsheet on 1/12 did not include this, and it is critical that we understand the answer to this question for all custodians and not just the prior authorization reviewers. Among other things, if data for custodians Pittman and Sawyers (on our list above) does not exist, please notify us of that as soon as possible so that we can identify other priority corporate custodians.
2. **O365 Migration.** You stated in your email on 1/12 that “[t]he pattern suggests that those without identifiable data terminated prior to the date (July 2017) data was migrated over to O365 for all Magellan employees. Magellan's IT department is attempting to determine whether any steps can be taken to ascertain whether data exists in some archived format outside of O365 for these PAs.”
 - a. Do you have an update on whether data exists in other archived forms?
 - b. For custodian Kimberly Barnes, no data exists despite that person being terminated after 7/2017. What accounts for that?
3. **Date breakdown of data.** Has your client taken any steps to determine whether data from 2014-2016 exists within the data for those custodians terminated after July 2017, or whether that data is limited to data from 2016/2017 forward?
4. **Responsible person.** For our awareness, we would appreciate if you could provide us with the name(s) of the person(s) at your client who are assisting with the search for and analysis of this data.

Best regards,

Michael

Michael R. Dziuban

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O: +1 202.955.8252 • M: +1 571.239.1379
MDziuban@gibsondunn.com • www.gibsondunn.com

From: John David Collins <JCollins@maynardcooper.com>

Sent: Friday, January 14, 2022 4:21 PM

To: Dziuban, Michael R. <MDziuban@gibsondunn.com>; Andrew B. Campbell <Andrew.Campbell@ag.tn.gov>; Tony

Hullender <Tony.Hullender@ag.tn.gov>; Nate Casey <Nate.Casey@ag.tn.gov>; McConkey, Robert (USATNE) <Robert.McConkey@usdoj.gov>
Cc: Phillips, Jonathan M. <JPhillips@gibsondunn.com>; Brodsky, Reed <RBrodsky@gibsondunn.com>; Katterhagen, Jillian N. <JKatterhagen@gibsondunn.com>; Clint Woodfin (cwoodfin@spicerfirm.com) <cwoodfin@spicerfirm.com>; Todd Panciera <TPanciera@maynardcooper.com>
Subject: RE: U.S. & Tenn. v. Walgreen Co., No. 21-cv-00080-JRG-CRW - Walgreens' discovery responses; meet-and-confer per today's motion hearing

[WARNING: External Email]

Michael: Have you made any determination as to the priority of the PA custodians based on the information we provided to you on 1/7 and 1/12? Although we have concerns and reserve all rights to object to the number of custodians, time-frame, etc. (issues raised during our call), it would nevertheless be helpful if you could prioritize the PA custodians (by providing for example the top 5) based on the information currently at your disposal so that Magellan's efforts to process/pull that data will not be unnecessarily delayed. Please advise. Have a nice weekend.

JDC

John David Collins

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From: John David Collins <JCollins@maynardcooper.com>
Sent: Wednesday, January 12, 2022 4:17 PM
To: Dziuban, Michael R. <MDziuban@gibsondunn.com>; Andrew B. Campbell <Andrew.Campbell@ag.tn.gov>; Tony Hullender <Tony.Hullender@ag.tn.gov>; Nate Casey <Nate.Casey@ag.tn.gov>; McConkey, Robert (USATNE) <Robert.McConkey@usdoj.gov>
Cc: Phillips, Jonathan M. <JPhillips@gibsondunn.com>; Brodsky, Reed <RBrodsky@gibsondunn.com>; Katterhagen, Jillian N. <JKatterhagen@gibsondunn.com>; Clint Woodfin (cwoodfin@spicerfirm.com) <cwoodfin@spicerfirm.com>
Subject: RE: U.S. & Tenn. v. Walgreen Co., No. 21-cv-00080-JRG-CRW - Walgreens' discovery responses; meet-and-confer per today's motion hearing

We have updated the spreadsheet to reflect the volume of data (size/bites) that Magellan has been able to identify for the PAs. This includes both archived data and active data in O365. The pattern suggests that those without identifiable data terminated prior to the date (July 2017) data was migrated over to O365 for all Magellan employees. Magellan's IT department is attempting to determine whether any steps can be taken to ascertain whether data exists in some archived format outside of O365 for these PAs. Also "Zhaquaia Boyd" and Zhaquaia Napper" are the same person (name change) so I removed "Zhaquaia Boyd" from the list to avoid confusion. Let me know if you have any questions.

JDC

John David Collins

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A LexMundi Member

From: Dziuban, Michael R. <MDziuban@gibsondunn.com>

Sent: Wednesday, January 12, 2022 1:23 PM

To: John David Collins <JCollins@maynardcooper.com>; Andrew B. Campbell <Andrew.Campbell@ag.tn.gov>; Tony Hullender <Tony.Hullender@ag.tn.gov>; Nate Casey <Nate.Casey@ag.tn.gov>; McConkey, Robert (USATNE) <Robert.McConkey@usdoj.gov>

Cc: Phillips, Jonathan M. <JPhillips@gibsondunn.com>; Brodsky, Reed <RBrodsky@gibsondunn.com>; Katterhagen, Jillian N. <JKatterhagen@gibsondunn.com>; Clint Woodfin (cwoodfin@spicerfirm.com) <cwoodfin@spicerfirm.com>

Subject: RE: U.S. & Tenn. v. Walgreen Co., No. 21-cv-00080-JRG-CRW - Walgreens' discovery responses; meet-and-confer per today's motion hearing

John David:

We have not heard back from you. The prejudice to our client grows each and every day. We need this information no later than COB today, January 12. Time is of the essence.

Best regards,

Michael

Michael R. Dziuban

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MDziuban@gibsondunn.com • www.gibsondunn.com

From: John David Collins <JCollins@maynardcooper.com>

Sent: Monday, January 10, 2022 4:22 PM

To: Dziuban, Michael R. <MDziuban@gibsondunn.com>; Andrew B. Campbell <Andrew.Campbell@ag.tn.gov>; Tony Hullender <Tony.Hullender@ag.tn.gov>; Nate Casey <Nate.Casey@ag.tn.gov>; McConkey, Robert (USATNE) <Robert.McConkey@usdoj.gov>

Cc: Phillips, Jonathan M. <JPhillips@gibsondunn.com>; Brodsky, Reed <RBrodsky@gibsondunn.com>; Katterhagen, Jillian N. <JKatterhagen@gibsondunn.com>; Clint Woodfin (cwoodfin@spicerfirm.com) <cwoodfin@spicerfirm.com>

Subject: RE: U.S. & Tenn. v. Walgreen Co., No. 21-cv-00080-JRG-CRW - Walgreens' discovery responses; meet-and-confer per today's motion hearing

[WARNING: External Email]

Michael: Following up on our call Friday, Magellan's IT team is continuing to work to identify the binary data volume for the custodians. I'll get back to you when I have the results of their efforts, hopefully by tomorrow. Thanks,

JDC

John David Collins

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From: John David Collins <JCollins@maynardcooper.com>

Sent: Friday, January 7, 2022 8:01 AM

To: Dziuban, Michael R. <MDziuban@gibsondunn.com>; Andrew B. Campbell <Andrew.Campbell@ag.tn.gov>; Tony Hullender <Tony.Hullender@ag.tn.gov>; Nate Casey <Nate.Casey@ag.tn.gov>; McConkey, Robert (USATNE)

<Robert.McConkey@usdoj.gov>

Cc: Phillips, Jonathan M. <JPhillips@gibsondunn.com>; Brodsky, Reed <RBrodsky@gibsondunn.com>; Katterhagen, Jillian N. <JKatterhagen@gibsondunn.com>; Clint Woodfin (cwoodfin@spicerfirm.com) <cwoodfin@spicerfirm.com>

Subject: RE: U.S. & Tenn. v. Walgreen Co., No. 21-cv-00080-JRG-CRW - Walgreens' discovery responses; meet-and-confer per today's motion hearing

Good morning. In connection with our call later this morning I'm attaching an spreadsheet reflecting the employment status of the 62 CMs/reviewers identified by Walgreens. Thanks,

JDC

John David Collins

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From: Dziuban, Michael R. <MDziuban@gibsondunn.com>
Sent: Tuesday, January 4, 2022 10:08 AM
To: Andrew B. Campbell <Andrew.Campbell@ag.tn.gov>; John David Collins <JCollins@maynardcooper.com>; Rose, Erika E. <EERose@magellanhealth.com>; Tony Hullender <Tony.Hullender@ag.tn.gov>; Nate Casey <Nate.Casey@ag.tn.gov>; McConkey, Robert (USATNE) <Robert.McConkey@usdoj.gov>
Cc: Phillips, Jonathan M. <JPhillips@gibsondunn.com>; Brodsky, Reed <RBrodsky@gibsondunn.com>; Katterhagen, Jillian N. <JKatterhagen@gibsondunn.com>; Clint Woodfin (cwoodfin@spicerfirm.com) <cwoodfin@spicerfirm.com>
Subject: RE: U.S. & Tenn. v. Walgreen Co., No. 21-cv-00080-JRG-CRW - Walgreens' discovery responses; meet-and-confer per today's motion hearing

Andrew:

10:30am ET this Friday, 1/7, works for us. I will send a calendar invitation and dial-in.

Thanks,

Michael

Michael R. Dziuban

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MDziuban@gibsondunn.com • www.gibsondunn.com

From: Andrew B. Campbell <Andrew.Campbell@ag.tn.gov>
Sent: Thursday, December 30, 2021 5:41 PM
To: Dziuban, Michael R. <MDziuban@gibsondunn.com>; John Collins <JCollins@maynardcooper.com>; Rose, Erika E. <EERose@magellanhealth.com>; Tony Hullender <Tony.Hullender@ag.tn.gov>; Nate Casey <Nate.Casey@ag.tn.gov>; McConkey, Robert (USATNE) <Robert.McConkey@usdoj.gov>
Cc: Phillips, Jonathan M. <JPhillips@gibsondunn.com>; Brodsky, Reed <RBrodsky@gibsondunn.com>; Katterhagen, Jillian N. <JKatterhagen@gibsondunn.com>; Clint Woodfin (cwoodfin@spicerfirm.com) <cwoodfin@spicerfirm.com>
Subject: RE: U.S. & Tenn. v. Walgreen Co., No. 21-cv-00080-JRG-CRW - Walgreens' discovery responses; meet-and-confer per today's motion hearing

[WARNING: External Email]

Michael:

We are available for a follow-up teleconference on Friday, January 7th, after 10:30 (ET). I have spoken with counsel for Magellan, who also advises that he is available. As she stated during our last conference call, Ms. Rose is out of the office until January 3; thus, I do not know whether she will attend the teleconference.

Andrew B. Campbell, Esq.
Senior Assistant Attorney General
Public Interest Division
Office of Tennessee Attorney General
P.O. Box 20207
Nashville, Tennessee 37202-0207
p. 615.532.0356



From: Dziuban, Michael R. <MDziuban@gibsondunn.com>

Sent: Wednesday, December 22, 2021 5:39 PM

To: John Collins <JCollins@marnardcooper.com>; Rose, Erika E. <ERose@magellanhealth.com>; Andrew B. Campbell <Andrew.Campbell@ag.tn.gov>; Tony Hullender <Tony.Hullender@ag.tn.gov>; Nate Casey <Nate.Casey@ag.tn.gov>; McConkey, Robert (USATNE) <Robert.McConkey@usdoj.gov>

Cc: Phillips, Jonathan M. <JPhillips@gibsondunn.com>; Brodsky, Reed <RBrodsky@gibsondunn.com>; Katterhagen, Jillian N. <JKatterhagen@gibsondunn.com>; Clint Woodfin (cwoodfin@spicerfirm.com) <cwoodfin@spicerfirm.com>

Subject: RE: U.S. & Tenn. v. Walgreen Co., No. 21-cv-00080-JRG-CRW - Walgreens' discovery responses; meet-and-confer per today's motion hearing

Dear all:

Thank you again for your time on Monday's meet-and-confer. We write to memorialize our discussion and the steps that each side agreed to take. Those are set forth below in numbered bullet points, along with further statements of Walgreens' position where applicable.

We remain deeply concerned about the delays to date in searching for responsive Magellan email data. It is alarmingly clear from Monday's call that the government and Magellan have made virtually no progress in searching for such data since we served our first Requests for Production on August 2, 2021, to the point of having not even determined which of the custodians at issue have data available to be searched. The latter is a basic step that could have and should have been undertaken months ago. As you know, discovery (both fact and expert) in this case is currently set to close in late April. We will be on a very tight timeframe for document production and review, and for depositions, because of the delays to date on the government's and Magellan's side. If we encounter further delays, we intend to bring this to the Court's attention as it is causing direct and ongoing prejudice to Walgreens in this matter.

In light of these delays, we would like to reconvene this group at the end of the first week in January for a status update. By that time, we expect the government and Magellan to have made significant progress on the applicable items set forth below. For planning purposes, please let us know your availability on January 6 and January 7 for a follow-up teleconference.

Thank you.

Topics discussed on 12/20/2021 meet-and-confer:

1. **Employment status of prior authorization reviewers.** Magellan agreed to identify who among the list of 62 Magellan reviewers in the State's response to Interrogatory No. 6 are current employees, and which of the 62 reviewers still have available data for collection, to facilitate Walgreens' selection of 10 priority custodians. Please provide us this information as soon as possible. We expect the information to be readily accessible to Magellan, and it is critical that we know, prior to selecting the 10 priority custodians, who is and is not likely to have data available based on employment information (and the information you provided on the call regarding Magellan's standard 1-year retention policy). The first tab of the attached Excel list has a field that can be populated to indicate which of the 62 reviewers are current employees.
2. **10 priority custodians from among prior authorization reviewers.** Walgreens agreed to provide Magellan with a list of 10 priority custodians and date ranges, for whom data will be collected and

search terms run by way of an initial round of searches. As we stated on the call, we want searches run for all 62 reviewers, but we are willing to start with 10 priority custodians and have successive searches run after that. As noted above, we need information about current employment status of the 62 reviewers in order to make an informed selection of the 10 priority custodians.

3. **“Corporate” custodians.** Walgreens agreed to provide a list of “corporate level” custodians, date ranges, and relevant search terms, and Magellan agreed to report back with information about the results of those searches. We agreed that all “corporate level” custodians will be searched at this juncture. Please find the requested custodians in the second tab of the attached Excel list. The search strings to be run are explained in item 4 below, and the date range for these corporate custodians should be January 1, 2010 to the present. Please advise as soon as possible regarding the results of the searches.
4. **Search terms.** Walgreens agreed to review the list of search terms we provided previously to the government, in order to determine if there are any priority searches or if they should be adjusted in any way before being run over Magellan email data.
 - a) We are sending separately, via ShareFile (given the document’s inclusion of patient names), an updated list of search terms, annotated as follows:
 - i. Green highlighting indicates search terms that should be run only across data for the “corporate” custodians identified in the attached custodian list.
 - ii. Yellow highlighting indicates search terms that should be run only across data for the 62 reviewer custodians identified in the attached custodian list.
 - iii. No highlighting indicates search terms that should be run across data for all custodians.

We reserve the right to update the search terms, including based on custodian and/or based on Magellan’s feedback regarding the hit counts.

Please let us know as soon as possible of any issues Magellan’s e-discovery vendor identifies with the syntax of the search terms, as discussed on the call.

5. **Availability of data for custodians.** Magellan agreed to work with their IT department to determine, if possible, which custodians have email data available and which do not. We noted that we see this information as germane to discovery in this case, particularly in light of the Court’s statements on 12/14 making clear that it sees Magellan as the State’s agent for purposes of discovery. Please provide us this information about data availability as soon as possible. We understand that the custodian universe is large, but we expect that the effort to determine data availability will proceed in parallel with the other efforts to run search terms over the 10 priority reviewer custodians and across the corporate custodians.
6. **Certification.** Magellan indicated that it is willing to provide a certification by a records custodian, and to confer with Walgreens over the substance of that certification. Our position is still that the government must make the certification, but we are willing (reserving all rights) to hold that issue in abeyance, pending further progress and in the interest of taking a cooperative approach to discovery.

Michael R. Dziuban

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1050 Connecticut Avenue, N.W., Washington, DC 20036-5306

From: Rose, Erika E. <EERose@magellanhealth.com>
Sent: Tuesday, December 21, 2021 8:55 AM
To: Andrew B. Campbell <Andrew.Campbell@ag.tn.gov>; Dziuban, Michael R. <MDziuban@gibsondunn.com>
Cc: Tony Hullender <Tony.Hullender@ag.tn.gov>; Nate Casey <Nate.Casey@ag.tn.gov>; McConkey, Robert (USATNE) <Robert.McConkey@usdoj.gov>; Phillips, Jonathan M. <JPhillips@gibsondunn.com>; Brodsky, Reed <RBrodsky@gibsondunn.com>; Katterhagen, Jillian N. <JKatterhagen@gibsondunn.com>; John Collins <JCollins@maynardcooper.com>; Clint Woodfin (cwoodfin@spicerfirm.com) <cwoodfin@spicerfirm.com>
Subject: RE: U.S. & Tenn. v. Walgreen Co., No. 21-cv-00080-JRG-CRW - Walgreens' discovery responses; meet-and-confer per today's motion hearing

[WARNING: External Email]

Michael,

The database product we use for PA request disposition and clinical notes is called "FirstTrax." It is a proprietary integrated software product that connects with FirstRx, which is what we use for claims processing.

I have a mediation today and will be away for the rest of the year. John David will be your primary point of contact for this matter going forward.

Thanks,

Erika E. Rose
Vice President and Associate General Counsel, Litigation
Magellan Health

8621 Robert Fulton Drive
Columbia, Maryland 21046
O 410-953-2419
magellanhealth.com



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electronic transmission in error, please notify us by telephone at (410) 953-4701 or (800) 458-2740 ext. 34701. Thank you.

From: Andrew B. Campbell <Andrew.Campbell@ag.tn.gov>
Sent: Monday, December 20, 2021 4:15 PM
To: Dziuban, Michael R. <MDziuban@gibsondunn.com>
Cc: Rose, Erika E. <EERose@magellanhealth.com>; Tony Hullender <Tony.Hullender@ag.tn.gov>; Nate Casey <Nate.Casey@ag.tn.gov>; McConkey, Robert (USATNE) <Robert.McConkey@usdoj.gov>; Phillips, Jonathan M. <JPhillips@gibsondunn.com>; Brodsky, Reed <RBrodsky@gibsondunn.com>; Katterhagen, Jillian N. <JKatterhagen@gibsondunn.com>; John Collins <JCollins@maynardcooper.com>; Clint Woodfin <cwoodfin@spicerfirm.com> <cwoodfin@spicerfirm.com>
Subject: RE: U.S. & Tenn. v. Walgreen Co., No. 21-cv-00080-JRG-CRW - Walgreens' discovery responses; meet-and-confer per today's motion hearing

EXTERNAL: This email originated from outside of the organization. Do not click on any links or open any attachments unless you trust the sender and know the content is safe.

Michael:

Following up on our conversation today, please find attached the revised list of Walgreens' search terms that I previously forwarded to Magellan.

Thanks.

Andrew B. Campbell, Esq.
Senior Assistant Attorney General
Public Interest Division
Office of Tennessee Attorney General
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Nashville, Tennessee 37202-0207
p. 615.532.0356
Andrew.Campbell@ag.tn.gov



From: Dziuban, Michael R. <MDziuban@gibsondunn.com>
Sent: Monday, December 20, 2021 12:03 PM
To: Andrew B. Campbell <Andrew.Campbell@ag.tn.gov>
Cc: Rose, Erika E. <EERose@magellanhealth.com>; Tony Hullender <Tony.Hullender@ag.tn.gov>; Nate Casey <Nate.Casey@ag.tn.gov>; McConkey, Robert (USATNE) <Robert.McConkey@usdoj.gov>; Phillips, Jonathan M. <JPhillips@gibsondunn.com>; Brodsky, Reed <RBrodsky@gibsondunn.com>; Katterhagen, Jillian N. <JKatterhagen@gibsondunn.com>; John Collins <JCollins@maynardcooper.com>; Clint Woodfin <cwoodfin@spicerfirm.com> <cwoodfin@spicerfirm.com>
Subject: Re: U.S. & Tenn. v. Walgreen Co., No. 21-cv-00080-JRG-CRW - Walgreens' discovery responses; meet-and-confer per today's motion hearing

Here are the topics we'd propose to discuss. Thanks.

- Magellan's and the government's efforts to search for and produce Magellan documents and information responsive to Walgreens' RFPs
- Timeline for making and completing productions
- Certification of completeness

Michael R. Dziuban

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[1050 Connecticut Avenue, N.W., Washington, DC 20036-5306](http://www.gibsondunn.com)
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On Dec 20, 2021, at 12:35 PM, Andrew B. Campbell <Andrew.Campbell@ag.tn.gov> wrote:

[WARNING: External Email]

Michael:

Can you circulate the agenda? Thanks.

Andrew B. Campbell, Esq.
Senior Assistant Attorney General
Public Interest Division
Office of Tennessee Attorney General
P.O. Box 20207
Nashville, Tennessee 37202-0207
p. 615.532.0356
Andrew.Campbell@ag.tn.gov
<image001.jpg>

From: Dziuban, Michael R. <MDziuban@gibsondunn.com>
Sent: Thursday, December 16, 2021 8:56 AM
To: Rose, Erika E. <EERose@magellanhealth.com>; Andrew B. Campbell <Andrew.Campbell@ag.tn.gov>; Tony Hullender <Tony.Hullender@ag.tn.gov>; Nate Casey <Nate.Casey@ag.tn.gov>; McConkey, Robert (USATNE) <Robert.McConkey@usdoj.gov>
Cc: Phillips, Jonathan M. <JPhillips@gibsondunn.com>; Brodsky, Reed <RBrodsky@gibsondunn.com>; Katterhagen, Jillian N. <JKatterhagen@gibsondunn.com>; John Collins <JCollins@maynardcooper.com>; Clint Woodfin (<cwoodfin@spicerfirm.com> <cwoodfin@spicerfirm.com>)
Subject: RE: U.S. & Tenn. v. Walgreen Co., No. 21-cv-00080-JRG-CRW - Walgreens' discovery responses; meet-and-confer per today's motion hearing

Thanks, all. 3:30pm ET on 12/20 works for us. We will circulate a calendar invitation and dial-in to this group and will follow up with an agenda.

Michael

Michael R. Dziuban

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From: Rose, Erika E. <EERose@magellanhealth.com>
Sent: Wednesday, December 15, 2021 5:54 PM
To: Andrew B. Campbell <Andrew.Campbell@ag.tn.gov>; Dziuban, Michael R. <MDziuban@gibsondunn.com>; Tony Hullender <Tony.Hullender@ag.tn.gov>; Nate Casey <Nate.Casey@ag.tn.gov>; McConkey, Robert (USATNE) <Robert.McConkey@usdoj.gov>
Cc: Phillips, Jonathan M. <JPhillips@gibsondunn.com>; Brodsky, Reed <RBrodsky@gibsondunn.com>; Katterhagen, Jillian N. <JKatterhagen@gibsondunn.com>; John Collins <JCollins@maynardcooper.com>
Subject: RE: U.S. & Tenn. v. Walgreen Co., No. 21-cv-00080-JRG-CRW - Walgreens' discovery responses; meet-and-confer per today's motion hearing

[WARNING: External Email]

Thank you, Andrew. Please also include John David Collins (copied here) on the invite for Monday afternoon along with the specific list of topics/RFPs to discuss. Maynard Cooper & Gale will be assisting us with e-discovery and privilege/relevance review.

Thanks!

Erika E. Rose
Vice President and Associate General Counsel, Litigation
Magellan Health

8621 Robert Fulton Drive
Columbia, Maryland 21046
O 410-953-2419
magellanhealth.com

<image002.png>

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From: Andrew B. Campbell <Andrew.Campbell@ag.tn.gov>
Sent: Wednesday, December 15, 2021 5:46 PM

To: Dziuban, Michael R. <MDziuban@gibsondunn.com>; Tony Hullender <Tony.Hullender@ag.tn.gov>; Nate Casey <Nate.Casey@ag.tn.gov>; McConkey, Robert (USATNE) <Robert.McConkey@usdoj.gov>
Cc: Phillips, Jonathan M. <JPhillips@gibsondunn.com>; Brodsky, Reed <RBrodsky@gibsondunn.com>; Katterhagen, Jillian N. <JKatterhagen@gibsondunn.com>; Rose, Erika E. <EERose@magellanhealth.com>
Subject: RE: U.S. & Tenn. v. Walgreen Co., No. 21-cv-00080-JRG-CRW - Walgreens' discovery responses; meet-and-confer per today's motion hearing

EXTERNAL: This email originated from outside of the organization. Do not click on any links or open any attachments unless you trust the sender and know the content is safe.

Michael:

I have conferred with Magellan, and the only time that all parties are available for a meet-and-confer prior to Christmas is Monday, December 20th, after 3:30 PM (ET). Please let us know if this is acceptable.

In addition, please forward an outline of your anticipated topics of discussion to us, and to Erika Rose (VP and Associate General Counsel, Litigation) who I have copied on this email. Thank you.

Andrew B. Campbell, Esq.
Senior Assistant Attorney General
Public Interest Division
Office of Tennessee Attorney General
P.O. Box 20207
Nashville, Tennessee 37202-0207
p. 615.532.0356
Andrew.Campbell@ag.tn.gov
<image001.jpg>

From: Andrew B. Campbell <Andrew.Campbell@ag.tn.gov>
Sent: Wednesday, December 15, 2021 8:39 AM
To: Dziuban, Michael R. <MDziuban@gibsondunn.com>; Tony Hullender <Tony.Hullender@ag.tn.gov>; Nate Casey <Nate.Casey@ag.tn.gov>; McConkey, Robert (USATNE) <Robert.McConkey@usdoj.gov>
Cc: Phillips, Jonathan M. <JPhillips@gibsondunn.com>; Brodsky, Reed <RBrodsky@gibsondunn.com>; Katterhagen, Jillian N. <JKatterhagen@gibsondunn.com>
Subject: RE: U.S. & Tenn. v. Walgreen Co., No. 21-cv-00080-JRG-CRW - Walgreens' discovery responses; meet-and-confer per today's motion hearing

Michael:

Thanks for the discovery responses, which we will review.

I will forward the dates you have provided to Magellan and get back to you.

Andrew B. Campbell, Esq.
Senior Assistant Attorney General
Public Interest Division
Office of Tennessee Attorney General
P.O. Box 20207
Nashville, Tennessee 37202-0207
p. 615.532.0356
Andrew.Campbell@ag.tn.gov
<image001.jpg>

From: Dziuban, Michael R. <MDziuban@gibsondunn.com>
Sent: Tuesday, December 14, 2021 9:08 PM
To: Andrew B. Campbell <Andrew.Campbell@ag.tn.gov>; Tony Hullender <Tony.Hullender@ag.tn.gov>; Nate Casey <Nate.Casey@ag.tn.gov>; McConkey, Robert (USATNE) <Robert.McConkey@usdoj.gov>
Cc: Phillips, Jonathan M. <JPhillips@gibsondunn.com>; Brodsky, Reed <RBrodsky@gibsondunn.com>; Katterhagen, Jillian N. <JKatterhagen@gibsondunn.com>
Subject: U.S. & Tenn. v. Walgreen Co., No. 21-cv-00080-JRG-CRW - Walgreens' discovery responses; meet-and-confer per today's motion hearing

Counsel:

First, attached please find an electronic copy of Walgreens' responses to Plaintiffs' first set of requests for discovery. We are also sending hard copies.

Second, and further to Judge Wyrick's oral order today, please advise as to your and Magellan's availability in the following timeframes for a telephonic meet-and-confer. For the sake of everyone's schedules, we would prefer to conduct the meet-and-confer before the upcoming holidays. If none of these times work, however, we can provide dates for the week of 12/27.

Friday, 12/17: any time except 9-10am ET and 2-3pm ET

Monday, 12/20: any time after 1:30pm ET

Tuesday, 12/21: before 10am ET or after 5:30pm ET

Wednesday, 12/22: any time

Thursday, 12/23: any time

In keeping with the Court's instructions, we expect that whoever from Magellan participates will be someone with knowledge of and authority over discovery, including electronic discovery. Similarly, if Magellan indicates to you that they will not participate in the meet-and-confer, please notify us of that as soon as possible, so that we can bring it to the Court's attention.

Thanks,

Michael

Michael R. Dziuban

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Exhibit I

From: Todd Panciera
Sent: Friday, January 28, 2022 6:35 PM
To: Dziuban, Michael R.; Brodsky, Reed
Cc: John David Collins; McConkey, Robert (USATNE); Andrew B. Campbell; Tony Hullender; Phillips, Jonathan M.; Katterhagen, Jillian N.; Clint Woodfin (cwoodfin@spicerfirm.com)
Subject: U.S. & Tenn. v. Walgreen Co., No. 21-cv-00080-JRG-CRW | Magellan ESI Update
Attachments: CONFIDENTIAL_Custodian Status & Search Hits for Walgreens (1.27.2022) (06284581-2x80C68).XLSX

Counsel,

This e-mail serves as an update regarding the Magellan's ESI efforts, which we previously reported on last week.

File Upload/Processing

This week, Magellan's ESI vendor processed the mailboxes of five (5) of eight (8) Corporate Custodians (J. Johnson, Jones, Lovett, Pittman, and Webb) – more than 1M total records. The three remaining Corporate Custodians (Sawyer, Hawkins, and Hoofnagle) have been uploaded and will finish processing early next week. Magellan likewise exported data for the five (5) PA Priority Custodians you identified on January 14, 2022 (T. Johnson, Bueno, Okaro, Quintana, and Vaughan), and those will be processed in short order. The attached preliminary report reports the processing status for each custodian mailbox submitted to-date, the individual record counts and oldest records identified, and the search term hit counts, the latter of which are discussed below.

Search Terms

Magellan applied Walgreen's December 20, 2021 revised search terms to the 1M records currently in the database, and we are ready to report initial results. The searches Walgreens supplied needed some tailoring before our e-discovery platform, Relativity, would run them. For example, six (6) searches surpassed Relativity's 450-character limit and needed to be broken into multiple search strings. Once run, the searches for the first five Corporate Custodians yielded more than 105,000 records for study – these are "hits + families" in the attached spreadsheet.

Obviously, studying more than 105,000 records for relevance, privilege, and confidentiality will take some time, and these are only preliminary results. We will provide a detailed hit report regarding the search terms results for all thirteen (13) priority custodians (eight Corporate Custodians plus five PA Custodians) next week once all mailboxes have been processed. We suggest Walgreens review the hit report with an eye toward refining Walgreens' search terms. For example, one search containing the wildcard term "den*" yielded more than 12,000 results (nearly 11 GB).

We will report more information as it becomes available. Please let me know if there are questions regarding the content of this update.

Todd Panciera
Associate | Litigation
P: 205.488.3641
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Birmingham, AL 35203



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